NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III

No. CACR 07-1055

	Opinion Delivered MARCH 19, 2008
MANUEL CUELLAR APPELLANT	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT, [CR-06-1647-I]
V.	HONORABLE TOMMY J. KEITH, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Manuel Cuellar pleaded guilty to leaving the scene of an accident that involved a death (a felony) and driving while on a suspended driver's license (a misdemeanor). A jury was empaneled to consider sentencing. The jury sentenced appellant to twelve years in prison plus a fine on the felony, and six months' incarceration plus a fine on the misdemeanor. The judge imposed the sentences on appellant, running them concurrently. Appellant appeals the sentence, asserting that the trial court erred in considering evidence outside the record when it imposed the jury's sentences. We disagree that appellant has shown reversible error. Therefore, we affirm.

In Arkansas, sentencing is entirely a matter of statute. *See* Ark. Code Ann. § 5-4-104(a) (Supp. 2003) ("No defendant convicted of an offense shall be sentenced

otherwise than in accordance with this chapter.") Arkansas Code Annotated section 16-97-101 governs the bifurcated sentencing procedures in Arkansas, and it provides in subsection (6) that "[a]fter a plea of guilty, the defendant, with the agreement of the prosecution and the consent of the court, may be sentenced by a jury impaneled for purposes of sentencing only." Here, appellant had a jury decide his sentence, and the trial judge merely imposed the sentence entered by the jury verdict. The trial judge was vested with authority only to reduce the punishment if it were considered too severe under the circumstances. *Thomas v. State*, 349 Ark. 447, 79 S.W.3d 347 (2002).

At the sentencing hearing, the jury was told in opening statements that appellant had prior convictions, including one DWI conviction and a pending DWI charge. An objection was raised and sustained as to the pending charge alone. These DWI offenses were mentioned again in the State's closing argument to the jury, without objection from the defense. The jury deliberated and determined the sentences enumerated above. The jury was released, and formal sentencing was set for another day. When the case was reconvened, the trial court pronounced sentence, stating in relevant part:

> Mr. Cuellar, I think it's reasonable in this case to infer that you were drinking at the time that this collision occurred based on your – your record. ...[Y]ou're driving on a suspended license and – and you're drinking and you're involved in a collision and you leave the scene of that collision it's understandable why a jury would come back with the recommendation that they did.

The judge then sentenced appellant in accordance with the jury's decision. Thereupon, defense counsel approached the bench and lodged an objection on the basis that there was no evidence introduced to show that appellant had been drinking on the day of this accident.

The judge noted the objection. The proceedings concluded, judgment was entered, and this appeal followed.

Appellant contends that the trial court erred in considering improper evidence, inferring that he was drinking at the time of the accident at issue. Appellant seeks re-sentencing on this basis. We cannot agree.

It is presumed that the trial judge, when sitting as the sentencing body, will accept all relevant and competent evidence on the question of sentencing. *Clinkscale v. State*, 269 Ark. 324, 602 S.W.2d 618 (1980). Here, however, the *jury* was the sentencing body, and the trial judge imposed that sentence. Appellant did not seek to reduce the jury's sentence as unduly harsh pursuant to Ark. Code Ann. § 16-90-107(e). Appellant mistakenly asserts that the trial court was sitting as the sentencing body in this case; it was not.

For the foregoing reasons, we affirm.

HART and MILLER, JJ., agree.